

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

GEORGE D. RICHARDSON,  
Appellant,

v.

DEPARTMENT OF THE TREASURY,  
Agency.

DOCKET NUMBER  
DA07528910046

DATE: JUN-13 1989

George D. Richardson, San Antonio, Texas, pro se.

Patricia L. Makin, Houston, Texas, for the agency.

BEFORE

Daniel R. Levinson, Chairman  
Maria L. Johnson, Vice Chairman  
Samuel W. Bogley, Member

OPINION AND ORDER

This case is before the Board on the appellant's petition for review of an initial decision that dismissed his appeal as not within the Board's appellate jurisdiction. For the reasons set forth below, the Board DENIES the appellant's petition for failure to meet the criteria for review under 5 C.F.R. § 1201.115. The Board REOPENS this case on its own motion under 5 C.F.R. § 1201.117, however, and AFFIRMS the initial decision as MODIFIED in this Opinion and Order. The appeal is DISMISSED for lack of jurisdiction.

### BACKGROUND

The appellant, a GS-12 intelligence research specialist, was selected for the GS-11 position of Criminal Investigator (Special Agent) with the Customs Service effective October 25, 1987. He voluntarily accepted the change from the GS-12 position to the lower-graded special agent position. See Agency File, Tab 4(f).

Upon further review of the appellant's SF-171 and his Official Personnel Folder, the agency found that it had erroneously credited the appellant with prior federal law enforcement service, which would have allowed for a waiver of the maximum age requirement. The agency, therefore, determined that the appellant was ineligible for the position by application of the maximum entry age of 35 for original appointment to a Customs law enforcement position. Thus, the appellant's appointment was cancelled and he was returned to his former GS-12 position.

In his appeal to the regional office, the appellant contended that there were mechanisms available by law and administrative procedure which would allow the agency to permit him to remain in the special agent position. After allowing the appellant an opportunity to establish Board jurisdiction, the administrative judge dismissed the appeal for lack of jurisdiction. She found that, despite the appellant's belief that the GS-11 special agent position offered more opportunities for advancement, the appellant's

return to his GS-12 position was not a reduction-in-grade. The administrative judge further found that authorized unscheduled overtime in the special agent position was not part of the appellant's basic pay for adverse action purposes, and, therefore, he did not suffer a reduction in pay. In addition, the administrative judge found that the agency's determination of the requirements that must be fulfilled in order for an individual to qualify for appointment and retention in a position is outside the Board's jurisdiction.

In his petition for review, the appellant states that the agency committed wrongful acts against him. His arguments relate to the merits of the cancellation and reassignment, procedures in adverse action cases, alleged harmful procedural error and violations of due process and constitutional rights, bad faith by the agency, prohibited personnel practices, and age discrimination. He further alleges retaliation and bad faith because his current intelligence research specialist position was not upgraded to GS-13.

#### ANALYSIS

The petition for review does not present any new evidence nor establish erroneous interpretation of applicable statute or regulation by the administrative judge. None of the matters asserted by the appellant establishes Board jurisdiction. Thus, the petition does not meet the Board's criteria for review under 5 C.F.R. § 1201.115.

We reopen the appeal on our own motion, however, because the jurisdictional order issued by the regional office on October 21, 1988, did not provide the appellant with the requisite information regarding proof of jurisdiction over his appeal. Rather, it cited only to 5 U.S.C. § 7121, which pertains to elections between Board proceedings and negotiated grievance procedures. In *Burgess v. Merit Systems Protection Board*, 758 F.2d 641 (Fed. Cir. 1985), the court held that a jurisdictional show-cause order must be reasonably calculated to apprise the appellant of what is required to establish an appealable jurisdictional issue.

Although the show-cause order here was too restrictive, the appellant's rights were not prejudiced. See *Karapinka v. Department of Energy*, 6 M.S.P.R. 124, 127 (1981) (the administrative judge's procedural error is of no legal consequence unless it is shown that it has adversely affected a party's substantive rights). The appellant contended before the administrative judge that the Board had jurisdiction over the action as a reduction in pay and grade under 5 U.S.C. § 7512. See Appeal File, Tabs 5 and 7. These contentions were fully considered by the administrative judge. See Initial Decision at 4-6.

In his petition for review, the appellant again contends that the Board has jurisdiction and cites numerous statutes and regulations in support of his argument. We find, however, that the appellant's legal citations and factual assertions do

not provide basis for a jurisdictional hearing.\* See *Dumas v. Merit Systems Protection Board*, 789 F.2d 892, 894 (Fed. Cir. 1986); *Burgess*, 758 F.2d at 643.

The Board's jurisdiction is not plenary; it is limited to that specifically granted to it. See *Saunders v. Merit Systems Protection Board*, 757 F.2d 1288, 1290 (Fed. Cir. 1985); *Harpster v. Department of the Army*, 39 M.S.P.R. 43, 45 (1988). The Board has specifically held that it does not have jurisdiction to review an employee's reassignment without loss of pay or grade. See, e.g., *Hennessey v. U.S. Postal Service*, 28 M.S.P.R. 127 (1985). Thus, the merits of the agency's decision to return the appellant to his higher-graded former position are not reviewable by the Board. Further, allegations of discrimination and other prohibited personnel practices are not an independent source of appellate jurisdiction for the Board. See *Wren v. Department of the Army*, 2 M.S.P.R. 1, 2 (1980), *aff'd sub nom. Wren v. Merit Systems Protection Board*, 681 F.2d 867, 871-73 (D.C. Cir. 1982); 5 U.S.C. §§ 7701(c)(2)(B), 7702(a)(1).

Because the appellant has made all relevant jurisdictional arguments and they have been considered by the administrative judge and the Board, the error by the administrative judge in not providing full information in the show-cause order did not adversely affect the appellant's rights. See *Karapinka*, 6 M.S.P.R. at 127 (1981).

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\* In light of our jurisdictional finding, we do not reach the issue of the timeliness of the appeal.

ORDER

This is the final order of the Merit Systems Protection Board in this case. 5 C.F.R. § 1201.113(c).

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.

  
Robert E. Taylor  
Clerk of the Board